

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND  
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.  
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

FILED BY CLERK

JUL -6 2012

COURT OF APPEALS  
DIVISION TWO

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION TWO

THE STATE OF ARIZONA,	)	2 CA-CR 2011-0353
	)	DEPARTMENT B
Appellee,	)	
	)	<u>MEMORANDUM DECISION</u>
v.	)	Not for Publication
	)	Rule 111, Rules of
MIKA KEHUALANI BLANK,	)	the Supreme Court
	)	
Appellant.	)	
_____	)	

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR20080956

Honorable Roger Duncan, Judge Pro Tempore  
Honorable Edgar B. Acuña, Judge  
Honorable Paul E. Tang, Judge

AFFIRMED

Lori J. Lefferts, Pima County Public Defender  
By Kristine Maish

Tucson  
Attorneys for Appellant

ESPINOSA, Judge.

¶1 After a jury trial in absentia, appellant Mika Blank was convicted of transportation of marijuana for sale. The trial court sentenced her to a minimum, four-year prison term. Counsel has filed a brief in compliance with *Anders v. California*, 386 U.S. 738 (1967), and *State v. Leon*, 104 Ariz. 297, 451 P.2d 878 (1969), stating she has

reviewed the record and “has been unable to find any arguably meritorious issue to raise on appeal.” Counsel has, however, suggested one issue for us to consider—whether Blank’s “absence from trial was arguably involuntary because the notice of trial was constitutionally inadequate”—and asks us to search the record for reversible error.

¶2 Viewed in the light most favorable to sustaining the verdict, the evidence presented at trial was sufficient to support the jury’s finding of guilt. *See State v. Tamplin*, 195 Ariz. 246, ¶ 2, 986 P.2d 914, 914 (App. 1999). It showed that when Blank went through an immigration checkpoint, border patrol officers discovered 239.9 pounds of marijuana, packaged in bricks and bales, in the back seat and trunk of her vehicle. An Arizona Department of Public Safety detective testified that the amount of marijuana found and the way in which it was packaged were consistent with transportation of the drug for sale. We further observe the sentence imposed is within the statutory limit. *See* A.R.S. §§ 13-702(D);<sup>1</sup> 13-3405(A)(4), (B)(11).

¶3 We find no arguable merit in Blank’s suggestion that her absence from trial might be regarded as involuntary. A defendant has a right to be present at all critical stages of a criminal proceeding, *State v. Garcia-Contreras*, 191 Ariz. 144, ¶ 8, 953 P.2d 536, 538 (1998), but that right may be waived by a defendant’s voluntary absence, Ariz. R. Crim. P. 9.1. The trial court may infer a defendant’s absence is voluntary if she had

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<sup>1</sup>The Arizona criminal sentencing code has been renumbered, effective “from and after December 31, 2008.” *See* 2008 Ariz. Sess. Laws, ch. 301, §§ 1-120. For ease of reference and because no changes in the statutes are material to the issues in this case, *see id.* § 119, we refer in this decision to the current section numbers rather than those in effect at the time of Blank’s offense.

notice of the date and time of the proceeding, the right to be present, and a warning that the proceeding would take place in her absence if she failed to appear. *State v. Muniz-Caudillo*, 185 Ariz. 261, 262, 914 P.2d 1353, 1354 (App. 1996); *see also* Ariz. R. Crim. P. 9.1. That inference also can be drawn when a defendant, “although technically without personal notice of [the] trial date, failed to appear at any subsequent proceedings or keep in contact with trial counsel to ascertain [the] trial date.” *Muniz-Caudillo*, 185 Ariz. at 262, 914 P.2d at 1354; *see also State ex rel. Romley v. Superior Court*, 183 Ariz. 139, 144-45, 901 P.2d 1169, 1174-75 (App. 1995) (absence voluntary where defendant warned he could be tried *in absentia*, told to maintain contact with attorney, but escaped before advised of new trial date).

¶4 In this case, contrary to counsel’s assertion that Blank was warned only in writing, “in small typeface print,” that her trial would proceed in her absence, the transcript of her arraignment reflects that Blank was advised orally that her trial would proceed in her absence if she failed to appear. And, at the hearing on her motion to modify the conditions of her release in March 2008, Blank was advised of the date of the next hearing in the matter, a case management conference in May 2008. Although apparently still in contact with her attorney at that point, Blank did not appear at that conference, and thereafter failed to maintain contact with her attorney to learn of the trial date. This was a sufficient basis for the court to presume Blank had voluntarily absented herself from her trial. *See Muniz-Caudillo*, 185 Ariz. at 262, 914 P.2d at 1354; *Romley*, 183 Ariz. at 144-45, 901 P.2d at 1174-75. And Blank provided no explanation for having failed to communicate with her attorney when she was arrested in 2011. *Cf. State v.*

*Sainz*, 186 Ariz. 470, 473, 924 P.2d 474, 477 (App. 1996) (rebuttable inference under Rule 9.1 that any absence from proceeding voluntary). The trial court therefore did not abuse its discretion in finding Blank's absence voluntary and conducting her trial *in absentia*.

¶5 Pursuant to our obligation under *Anders*, we have searched the record for fundamental, reversible error and have found none. Blank's conviction and sentence are affirmed.

/s/ Philip G. Espinosa  
PHILIP G. ESPINOSA, Judge

CONCURRING:

/s/ Garye L. Vásquez  
GARYE L. VÁSQUEZ, Presiding Judge

/s/ Virginia C. Kelly  
VIRGINIA C. KELLY, Judge